Filed 1/20/15 In re A.M. CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re A.M. et al., Persons Coming Under the Juvenile Court Law.	
NAPA COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. A.M. et al., Defendant and Appellant.	A141742 (Napa County Super. Ct. Nos. JV17240 & JV17241)

A.M. (Mother) and F.M. (Father) (collectively, the parents) appeal from orders of the juvenile court terminating their parental rights with regard to minors A.M. and F.M. (collectively, the children). The children had become dependents of the court after the Napa County Department of Health and Human Services (the department) discovered they each had an untreated case of scabies and both made independent claims that Father hit them and Mother. The children entered foster care and reunification services were offered to the parents for a year, during which time Mother left for Mexico for five months without informing the department or the children. After reunification services were terminated, the juvenile court held a contested Welfare and Institutions Code[1]

[1] All further statutory citations are to the Welfare and Institutions Code unless otherwise indicated.

section 366.26 hearing, determined that the children are likely to be adopted, and terminated parental rights.

On appeal, the parents maintain that the court erred in finding the children to be adoptable and in determining that the beneficial-relationship exception to termination of parental rights does not apply. We disagree and affirm.

BACKGROUND

On September 4, 2012, when A.M was six years old and F.M. was five, the department received a report of general neglect of the children. The reporting person stated that A.M. had explained her late arrival at school as due to Father hitting Mother, resulting in the police coming to the house. A.M. also asked if F.M. could accompany her class on a fieldtrip because she did not want to leave him alone with Father. She stated that Father would frequently hit them and push them from chairs. The reporting person noted that A.M. " 'scratches on herself constantly.' "

A social worker investigated at the children's school on September 10, 2012. Of the 18 school days between August 15 and September 10, 2012, A.M. had 9 unexcused absences, and F.M. had 11 unexcused absences.

The social worker talked with A.M. in the nurse's office. A.M. appeared to be of average development and intelligence, but was significantly overweight. She had red, circular, irritated sores on her stomach. Her forearms and arms were covered with scattered sores and scratches. A.M. said that the sores hurt and she had had them for a long time. A.M. showed the social worker the same type of sores on her legs and stated that F.M. had similar sores.

Without prompting, A.M. told the social worker that Father "is mean and hits us." She stated that Father had pushed her out of a chair the day before. and that Father has hit her "everywhere" with a stick or seat belt. A.M. asked the social worker not to tell anyone what she had said because Father would be angry. She reported that she had seen Father slap Mother, but could not say when this had last happened. When the police came to her house, A.M. had not seen Father hit Mother, but she was in her bedroom and

could tell that Father slapped Mother because of the noises she heard. A.M. stated that she was scared.

A.M. said that Mother had two jobs and she saw Mother for a short time when she went from one job to the next. She said that Father worked at home, fixing cars in the garage.

The social worker next spoke with F.M., who was also significantly overweight. F.M. had sores on both hands and arms. He said that his mother had put a medicine on his hands, but it did not work. F.M. stated that Father is mean and that Father was mad and "just punched" Mother. He said that when he gets in trouble, his parents would hit him in the leg. Both parents would also hit him with a stick. He said that recently Father had hit him twice in the same day, but denied that the parents left any marks or bruises when they hit him.

The school nurse determined that the children appeared to have scabies and would need to leave school until they had been seen and diagnosed by a doctor. The nurse informed Father that the children needed to be seen by a doctor immediately. Despite the availability of same-day appointments, Father did not take the children to the clinic until four days later, on September 14, 2012. Father received a prescription to be administered immediately, but he did not treat the children until September 17, 2012. Subsequently, the department took the children into protective custody.

On September 19, 2012, a social worker had a meeting with Mother, who appeared to have the same itching and rash on her arms, neck, and hands as the children. Mother denied any domestic violence and denied that Father hit the children. She said that the children have a history of making up stories.

On September 20, 2012, the department filed dependency petitions for the minors pursuant to section 300. The petitions made allegations pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling).

The department filed a jurisdiction report on October 16, 2012, recommending that the court take jurisdiction over the children. The report noted that in 2003 the department had received a referral concerning alleged severe physical abuse by Father of

a child by a former wife. The child alleged that Father hit her and her mother and that Father threatened to hit her more often if she told anyone. The department had substantiated the allegation and a dependency case ensued, with reunification services provided to Father. Mother had no prior child welfare history.

The report stated that Mother had informed the social worker that she and Father were obtaining a divorce that should become final in October 2012 and that the divorce settlement provided for joint custody of the children. She and the children continued to live in Father's home due to lack of funds. Both Mother and Father continued to deny physical discipline of the children, incidents of domestic violence or a visit to the home by police due to domestic violence. However, Father said that police had once come to the house because the children were not in school.[2]

The jurisdiction report stressed that the children's reports of physical discipline by Father and of domestic violence were independent. The children had been interviewed separately and neither child knew that the interviews were going to be conducted. Moreover, the children's accounts were quite similar to the allegations made in the 2003 dependency proceeding for another of Father's children.

The jurisdiction report also noted that both Mother and Father had reported that A.M. was aggressive toward F.M. The foster parents and the social worker had also witnessed aggressive and negative behavior between the children. The department was "concerned that the aggressive behaviors exhibited by the children are a result of what they have witnessed in their home."

The department filed an amended jurisdiction report on October 26, 2012. It reported that Father had a supervised visit with the children on October 15, 2012, and that the children did not greet Father when he arrived and did not sit on the same couch with

[2] Father's account of a visit because of truancy was confirmed by the American Canyon Police Department, as noted in the department's later disposition report. A.M. also later told the social worker that police had come to her house to take her to school and denied that Mother had ever called the police.

him. Throughout the visit, Father was unresponsive to the children as they attempted to communicate with him, although he engaged with the visit supervisor.

A contested jurisdiction hearing was held on October 29, 2012. On December 3, 2012, the court found jurisdiction based on section 300, subdivisions (b) and (j), and sustained the allegations made in the petitions.

The department filed a disposition report on December 20, 2012, recommending that the court place care and custody of the children with the department and order family reunification services for both Mother and Father.[3] At a disposition hearing held the same day, both parents submitted on the disposition report without argument. The court adopted the department's recommendations in its disposition order.

The department filed a status review report on May 24, 2013, recommending continuation of the family reunification plan. The department had last had contact with Mother on April 3, 2013, when she met with the social worker and had a visit with the children. On April 16, Father told the social worker that Mother had left for Mexico three days earlier to see her ill mother. Mother had not informed the department. On April 17, Father was asked why Mother had missed a visit with the children on April 10. Father first said that Mother had been away visiting relatives, but then changed his story and said Mother had been working. He said he did not know when Mother would return from Mexico. Father said that he spoke with Mother almost every day, and the social worker asked Father to have her call the social worker to verify her whereabouts and discuss the reunification case. Father agreed, but the social worker never heard from Mother.

On April 19, 2013, a maternal great aunt provided the social worker with contact information for the maternal grandmother in Mexico. The social worker called the grandmother on April 26, 2013, and learned that the grandmother had not seen Mother.

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[3] The disposition report included an account of an interview with Mother on December 12, 2012, in which she stated that she and Father had divorced for tax reasons and that they continued to have a relationship, which was good. The divorce became final on October 14, 2012.

Mother had called the grandmother about 15 days earlier and indicated that she was in Mexico, but the grandmother did not know where she was or with whom she might be. The grandmother also stated that she was in good health.[4]

The report noted that A.M. struggled in getting along with others and could be aggressive and demanding to her peers and teacher. A.M.'s aggressive behavior toward F.M. continued and she had been referred to counseling. Both children struggled to respect boundaries or limits set by adults.

In the majority of Mother's visits with the children, she had failed to redirect the children or talk to them regarding their behavior in a way that was effective. At times she would wait for the visit supervisor to intervene before attempting to discipline the children. Mother was not in compliance with most parts of her family reunification plan.

Father had missed three of his scheduled weekly visits with the children and was late to another visit. For the majority of his visits, his interactions with the children were minimal. He had some positive interactions, but also some that were punitive and demeaning. Father reminded his children of past punishment in attempts to control the children's behaviors, on one occasion telling F.M., "Do you remember at home when you didn't listen you got the belt?"[5] Father was also not in compliance with most parts of his family reunification plan.

Following a six-month review hearing on June 4, 2014, the court found that both parents' progress was minimal and ordered an additional six months of reunification services.

On October 22, 2013, the department filed a status review report recommending that reunification services for the parents be terminated and that a section 366.26 hearing be set.

The children had been placed in separate foster homes following six prior placements together. Most of the prior placements ended because the foster parents were

[4] At the section 366.26 hearing, Mother testified that the grandmother had died since her return from Mexico.

[5] Father denied making this comment at the six-month review hearing.

unable to meet the behavioral needs of the children, and the department believed that their needs could be better met if they were separated for a period of time. The department reported that the children were doing well in their separate placements. Both children were enrolled in programs designed to address their behavioral issues. A.M. had demonstrated benefit from the programs—positive changes had been observed in her interactions with F.M. during visits.

Mother resumed contact with the social worker in September 2013, five months after she had left the family home. Mother said that she had gone to Mexico to "get rid of stress" because she "could not deal with the lies." When Mother returned from Mexico, she did not inform the department or attempt to resume visits. During her absence she did not attempt to contact the children or inquire about their welfare. The social worker learned that Mother had returned only because she was seen in the community and the social worker overheard her in a conversation with Father. Mother had been back for about two weeks before the department became aware of that fact.[6] Mother resumed visits with the children on September 20, 2013.

The department's status report stated that Mother was out of compliance with almost all requirements of her case plan, primarily because of her absence from April to September. During the reporting period, Father had not inquired about the children's school attendance; continued to struggle to engage with the children in play and to redirect their behavior when necessary; failed to develop and use a domestic violence relapse prevention plan; and failed to inquire about the children's health, safety and well-being. Father had consistently visited the children, except for two visits that he failed to confirm in advance as required. Father had completed an anger management class and a parenting class. The department recommended that the court find Mother's progress to be minimal and Father's progress to be moderate. It believed that neither parent had demonstrated a change in behavior that would ensure the children's safety if they were

[6] At the 12-month status hearing, Mother maintained Father informed the department of her return three days after her return.

returned. Both parents continued to deny domestic violence and physical discipline of the children. Neither parent accepted the reasons that the family came to the attention of the department as true.

Mother had had three visits with the children since her return. These visits went well and she appropriately engaged with the children in their conversations and play. Father failed to engage with the children at all during some visits and sometimes seemed to ignore F.M., causing F.M. to isolate himself from the family. Beginning in August, Father began to show improvement engaging with the children, but his engagement was not active and required prompting by the visit supervisor.

A contested 12-month status hearing commenced on November 21, 2013, and continued on November 27, 2013, and December 3, 2013. Appointed counsel for the children joined in the department's recommendations. The court found that the department had met its burden of showing that reasonable services had been offered to the parents and that it would be detrimental to the children to return them to the parents. The court also found that the parents had not met their burden of showing that the children could safely be returned to their care at the 18-month point (March 18, 2014) if reunification services were extended, because both parents had failed to make significant progress toward resolving the problems that led to the removal of the children. The court terminated reunification services and set the children's cases for a section 366.26 hearing.

On March 10, 2014, the department filed a report (section 366.26 report) with the court recommending that the parents' parental rights be terminated and that the permanent plan of adoption be selected and implemented. Since the previous report, A.M. had transitioned from her separate foster home to the foster home where F.M. was placed. The children had adjusted well to being back together, and A.M.'s prior aggressive behavior towards F.M. had not recurred. Following termination of reunification services, the parents' visits with the children had been reduced to once per month. A suitable prospective adoptive family had been identified.

The section 366.26 report was accompanied by separate adoption assessments for the children prepared by an adoption services social worker. The assessments concluded that both children were likely to be adopted.

A contested section 366.26 hearing was held on April 23, 2014. The adoption services social worker testified that the children's current foster parents had stated that they would like to pursue adoption. She believed that the foster family was likely to follow through with adoption and that the children looked to them as parents and called them "mom and dad." The prospective adoptive family identified in the section 366.26 report also remained interested in adoption. She believed that the children were generally adoptable. The children had stated that they did not want to be adopted and A.M. expressed a desire to return to the parents' home. Both children said that if they could not go home, they wanted to live at the current foster home.[7] The court found it likely that the children would be adopted, terminated parental rights, and ordered the permanent plan of adoption for the children.

Mother and Father timely filed notices of appeal on May 1 and May 15, 2014, respectively. Mother filed an opening brief on appeal, and Father joined in that brief.

DISCUSSION

The primary purpose of a section 366.26 hearing is to "provide stable, permanent homes" for the children who are dependents of the juvenile court. (§ 366.26, subd. (b).) The court may make one of several possible orders, listed in the statutory order of preference: (1) terminate parental rights and order that the child be placed for adoption; (2) for Indian children, order a plan of tribal customary adoption without termination of parental rights; (3) appoint a relative with whom the child is currently residing as legal guardian for the child; (4) if termination of parental rights would not be detrimental to the child and the child is difficult to place for adoption and no prospective adoptive parents have been identified, identify adoption as the permanent placement goal without

[7] Only if a child is 12 years of age or older does the child's objection to adoption become a bar to termination of parental rights. (§ 366.26, subd. (c)(1)(B)(ii); Fam. Code, § 8602.)

terminating parental rights; (5) appoint a nonrelative legal guardian; or (6) order that the child be placed in long-term foster care. (§ 366.26, subds. (b)(1)-(6).) "If the court determines, based on . . . evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption." (§ 366.26, subd. (c)(1).)

Section 366.26, subdivision (c)(1)(A)-(D) provides several exceptions under which parental rights are not terminated. The only possible exception on the facts of this case is section 366.26, subdivision (c)(1)(B)(i): the court finds a compelling reason for determining that termination would be detrimental to the children due to the circumstance that the parents have maintained regular visitation and contact with the children and the children would benefit from continuing the relationship. This exception is often referred to as the beneficial-relationship exception. (See, e.g., *In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.)

The parents here raise precisely the two questions presented by the statutory scheme: (1) Did the court err in finding the children are likely to be adopted? and (2) Did the court err by failing to find that the beneficial-relationship exception applies?

I. *The Children Are Likely To Be Adopted.*

We review for substantial evidence the juvenile court's determination that the children were likely to be adopted. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525-1526.) In making the determination of adoptability, the juvenile court "must focus on the child, and whether the child's age, physical condition, and emotional state may make it difficult to find an adoptive family." (*In re Erik P.* (2002) 104 Cal.App.4th 395, 400.) "A prospective adoptive parent's . . . interest in adopting is evidence that the child's age, physical condition, mental state, and other matters relating to the child are not likely to discourage others from adopting the child." (*Ibid*.) "Conceivably, there could be some legal impediment to adoption by a prospective adoptive parent that . . . might preclude reliance on this parent's interest as a basis for an adoptability finding. [Citation.] Or, there could be facts that contraindicate adoptability notwithstanding the parent's interest. . . . Absent such an impediment or evidence, it follows that the foster parents' interest in

adopting [a child] is sufficient to support the juvenile court's finding of general adoptability." (*In re I.W.*, at pp. 1526-1527.)

In this case the department identified two prospective adoptive families—the family identified in the section 366.26 report and the children's current foster parents. Nevertheless, the parents argue that "[t]he court's implied finding that the children were generally adoptable was in error. Based on their age, behavior, and emotional characteristics, the children should have been found to be specifically adoptable only, if at all."

"General" and "specific" adoptability are not statutory terms; rather, the courts have developed these concepts.[8] A child is "generally adoptable" when the child's age, physical condition and emotional state would not make it difficult to find an adoptive family. (See, e.g., *In re R.C.* (2008) 169 Cal.App.4th 486, 493-494.) A child is "specifically adoptable" when a prospective adoptive family has been identified. (See, e.g., *In re T.S.* (2003) 113 Cal.App.4th 1323, 1328.) General and specific adoptability are not mutually exclusive—a child may be both generally and specifically adoptable, and juvenile courts often make both findings. (See, e.g., *In re G.P.* (2014) 227 Cal.App.4th 1180, 1192.)

We will affirm a juvenile court's finding that a child is likely to be adopted if there is substantial evidence supporting a finding of either general or specific adoptability. (See, e.g., *In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1408.) The only practical difference is that "[i]f the child is considered generally adoptable, [the courts] do not examine the suitability of the prospective adoptive home. [Citation.] When the child is deemed adoptable based solely on a particular family's willingness to adopt the child, the

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[8] We do not find the term "specific adoptability" in a published case prior to *In re T.S.* (2003) 113 Cal.App.4th 1323, 1328 (the juvenile court found the minors were " 'specifically adoptable' " by their paternal grandparents and appellants contested that finding). Similarly, we do not find "general adoptability" in a published case prior to *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205 (finding insufficient evidence of "general adoptability").

trial court must determine whether there is a legal impediment to adoption." (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1231-1232.)

The distinction between general and specific adoptability is often blurred in practice because, as we have already noted, evidence of "[a] prospective adoptive parent's . . . interest in adopting is evidence that the child's age, physical condition, mental state, and other matters relating to the child are not likely to discourage others from adopting the child." (*In re Erik P.*, *supra*, 104 Cal.App.4th at p. 400.) As our colleagues in the Fifth District recently observed: "Not all dependency cases fall neatly into one of two scenarios: one, the availability of a prospective adoptive parent is *not a factor whatsoever* in the social worker's adoptability assessment; or two, the child is likely to be adopted *based solely* on the existence of a prospective adoptive parent. These scenarios represent opposite ends on the continuum of when a child is likely to be adopted. However, many adoption assessments that recommend an adoptability finding fall somewhere in the middle. They consist of a combination of factors warranting an adoptability finding, including, as in this case, the availability of a prospective adoptive parent. This is the reality we confront, notwithstanding appellate arguments that assume a child is either generally adoptable without regard to a prospective adoptive parent or specifically adoptable based solely on the availability of a prospective adoptive parent." (*In re G.M.* (2010) 181 Cal.App.4th 552, 562.)

Here it is undisputed that the department identified *two* prospective adoptive families. The 366.26 report met the statutory requirements of section 366.21, subdivision (i)(1), regarding information concerning prospective adoptive parents, for one of the prospective adoptive families (the other had not been identified at the time of the report). This information constituted substantial evidence that for the first prospective adoptive family, there would be no legal impediment to adoption.[9] Although the trial court did not

[9] The prospective adoptive parents were more than 10 years older than the children. (See Fam. Code, § 8601, subd. (a).) The children are under 12 years of age, so their consent to adoption is not required. (See Fam. Code, § 8602.) The prospective adoptive parents are in an intact marriage, and both consented to the adoption. (See Fam.

specifically address the question of a potential legal impediment at the section 366.26 hearing, the parents neither raised that as an issue nor objected to the evidence concerning the prospective adoptive parents at the hearing. Because the issue was not raised by the parents and there is no evidentiary basis for questioning the feasibility of the children's adoptive placement with the prospective adoptive parents identified in the report, we conclude that substantial evidence supports a finding that the children are specifically adoptable. (See *In re Brandon T.*, *supra*, 164 Cal.App.4th at p. 1411.) Accordingly, the juvenile court's determination that the children are likely to be adopted was supported by substantial evidence, and we need not decide whether the parents are correct in their argument that the children are not generally adoptable.[10]

II. ***The Parents Failed To Satisfy Their Burden For An Exception.***

Once the juvenile court determined that the children were likely to be adopted, it was required to terminate parental rights unless it determined that one of the exceptions set forth in section 366.26, subdivision (c)(1) applied. "Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1)." (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) The parents argue that the court erred by failing to find that the beneficial-relationship exception applies.

Code, § 8603.) Both prospective parents were employed in responsible positions, and they had a child close in age to A.M. and F.M. They had no criminal background and no history with child welfare services. The report stated that they are experienced parents, understand the children's behavior history, and are willing to meet the children's needs.

[10] The parents also argue that the section 366.26 report failed to meet the statutory requirements of 366.21, subdivision (i)(1), for the children's current foster parents—the second prospective adoptive family. Even had that information been included and shown that a legal impediment existed to adoption by the current foster parents, that would not have detracted from the substantial evidence establishing that the children are specifically adoptable by the first prospective adoptive family. Accordingly the parents were not prejudiced.

"The [beneficial-relationship] exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between the parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575-576.) We review a juvenile court's order on the beneficial-relationship exception for substantial evidence.[11] (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1166.)

In order for the beneficial-relationship exception to apply, the parent must have maintained regular visitation and contact with the child. Here, during the period when reunification services were offered to the parents, Mother left for Mexico and did not visit the children between April 3 and September 20, 2013, a period of five-and-a-half

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[11] As noted in *In re G.B.*, some courts apply an abuse of discretion standard, while others examine whether a beneficial relationship exists under the substantial evidence standard and examine whether that relationship provides a compelling reason for applying the exception under the abuse of discretion standard. (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1166, fn. 7.) We would also affirm under these alternate standards of review. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 ["The practical differences between [the abuse of discretion and substantial evidence] standards of review are not significant"].)

Mother also makes a common error in her argument, maintaining that she presented substantial evidence in support of the beneficial-relationship exception. "In the case where the trier of fact has expressly or implicitly concluded that the party with the burden of proof did not carry the burden and that party appeals, it is misleading to characterize the failure-of-proof issue as whether substantial evidence supports the judgment. This follows because such a characterization is conceptually one that allows an attack on (1) the evidence supporting the party who had no burden of proof, and (2) the trier of fact's unassailable conclusion that the party with the burden did not prove one or more elements of the case (citations). [¶] Thus, where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.]" (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.)

months. Mother did not inform the department that she would be gone and testified that she did not inform Father where she was going. Most importantly, she did not tell the children, though she knew they would be worried about her.

Mother now argues that she "should not be penalized because she left the country to care for her dying mother." Although Mother testified at the section 366.26 hearing that she went to Mexico because her mother was ill, this contradicted her earlier explanation to the social worker that she had gone to Mexico to "get rid of stress" because she "could not deal with the lies." It also contradicted her mother's statement to the social worker in April 2013 that she knew Mother had been in Mexico for about 15 days but had not seen her and that she (Mother's mother) was in good health. Nor would her mother's illness justify Mother's failure to contact the department, to explain her absence to the children, or to attempt contact with the children, at least by telephone. Despite the fact that Mother otherwise maintained regular visitation with the children, her absence from her children's lives for over five months during a period when she knew that progress with her case plan was essential for eventual reunification is substantial evidence supporting the juvenile court's implied finding that the visitation prerequisite of the beneficial-relationship exception is not met in this case. Mother's evidence did not overcome or otherwise render this evidence insufficient.

Father, on the other hand, maintained regular visitation and contact with the children throughout the period when reunification services were offered and afterwards. However, in his case, the question is whether he met his burden of proving that the children would benefit from a continued relationship with him. On appeal, Father has joined in Mother's brief, which argues that Mother met her burden, but offers no argument that Father met his. In the absence of argument on Father's behalf,[12] we simply observe that throughout the reunification period Father's engagement with the children

[12] "Where a point is merely asserted by appellant's counsel without any argument of or authority for the proposition, it is deemed to be without foundation and requires no discussion by the reviewing court." (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.)

was minimal. Although there was some improvement toward the end of the reunification period, his engagement was not active and required prompting by the visit supervisor. There was no evidence compelling the court to cause it to find that termination of Father's parental rights would be detrimental to the children, and its contrary finding is supported by the record.

DISPOSITION

The orders of the trial court following the section 366.26 hearing are affirmed.

STEWART, J.

We concur.

KLINE, P.J.

RICHMAN, J.